LAI FOH & SONS SDN BHD

v.

SKRINE & CO

HIGH COURT MALAYA, KUALA LUMPUR
MOHD NOOR AHMAD J
[SUIT NO: S6-22-702-1989]
31 MAY 2001

LEGAL PROFESSION: *Duty of care - Solicitor as stakeholder of client's land titles - Solicitor released land titles to third party who fraudulently charged them to financial institutions and absconded with loan monies - Whether fraud thereof a direct and natural consequence of solicitor's negligence - Whether solicitor exercised requisite care and skill - Whether solicitor could have foreseen the occurrence of fraud by the third party - Whether solicitor's duty of care should extend to tortious acts of third party wrongdoer*

TORT: *Negligence - Professional negligence - Solicitor as stakeholder of client's land titles - Solicitor released land titles to third party who fraudulently charged them to financial institutions and absconded with loan monies - Whether fraud thereof a direct and natural consequence of solicitor's negligence - Whether solicitor exercised requisite care and skill - Whether solicitor could have foreseen the occurrence of fraud by the third party - Whether solicitor's duty of care should extend to tortious acts of third party wrongdoer*

The plaintiff brought an action for damages against the defendant solicitors. The plaintiff claimed that the defendant whilst acting as stakeholder in respect of its four land titles, had negligently released the said titles to a third party, one Chung, who had subsequently charged them to two financial institutions by way of fraud and thereafter absconded with the loan monies. The land titles were forwarded to the defendant from one Messrs Shook Lin & Bok upon the defendant's undertaking not to release the same to the plaintiff until a sum of money had been paid by the plaintiff to one TLY. The defendant claimed that it could not be liable for the deliberate wrongdoings of Chung over whom it had no control and with whom it had no special relationship with and that served to break the chain of causation.

Held:

[1] SD1 who had acted for the plaintiff on the defendant's behalf, had been in practice for about twelve years and was a partner of the defendant for seven years. He was involved in conveyancing and corporate law practice. He was aware that the practice of conveyancing work encompassed certain rules of etiquette and required a high degree of skill and caution on the part of solicitors for the purpose of protecting their clients' interest. He knew that a solicitor would be liable for what he undertook under a solicitor's undertaking and a breach of that was a serious matter that could affect his client's interest. He was also aware that the National Land Code made provisions for instances of fraud and forgery and that it was prudent for conveyancing solicitors to protect their clients' interest against possible fraud or forgery. Yet he had released the land titles to Chung on the purported letter of authorisation by the plaintiff which was forged and he had not sought verification from the plaintiff. Under the circumstances, the conduct of SD1 had fallen well below the standards expected of a prudent conveyancing solicitor. It followed therefore that the defendant had breached its contract with the plaintiff for failing to exercise requisite care and skill to safeguard the plaintiff's interest and was also negligent.

[2] Having regard to the long experience of SD1 in conveyancing matters, the court was of the view that SD1 could have foreseen the occurrence of fraud or forgery as the result of his handing over the land titles to Chung. Further, the land titles were negligently released to Chung who had no right to receive them under the circumstances. Also, the defendant had the right to control Chung by reason of the undertakings given by the defendant to Messrs. Shook Lin & Bok not to release the land titles until TLY was paid the required sum of money by the plaintiff.

[3] On whether the duty of care imposed upon a solicitor should extend to ensure that a third party wrongdoer does not commit tortious acts against the victim of an original act of negligence, the court in arriving at its decision on the facts, had to strive neither unjustifiably to deprive the plaintiff of remedies for its injuries nor unjustifiably impose too heavily a legal responsibility on the defendant. The former is in the nature of public interest and the latter is of personal interest. Having balanced the conflicting interests, public interest must prevail in this case.

Per curiam:

[1] Fraud and forgery pertaining to land transactions are not uncommon in Malaysia. That is why the public entrusts conveyancing matters to solicitors. If solicitors are absolved of all liabilities because they cannot be said to be able to foresee that a third party will commit fraud or forgery as a result of handing over land titles to the third party, then a solicitor's retainer to handle a conveyancing matter will serve no useful purpose as members of the public will be better off handling their conveyancing transactions by themselves. Further, if fraud or forgery of a third party that results from the negligence of a conveyancing solicitor is to be regarded as an unforseeable event, that will open the floodgates. It would mean that a conveyancing solicitor can be negligent and yet not be liable to his client for loss caused by fraud or forgery of a third party. That will be an unhealthy trend.

[Judgment entered against defendant for the sum of RM2,075,417.]

Case(s) referred to:
Anns v. Merton London Borough Council [1978] AC 728 ***(refd)***
Anthony Ting Chio Pang v. Wong Bing Seng [1997] 2 CLJ 831 ***(foll)***
Home Office v. Dorset Yatch Co Ltd [1970] AC 1004 ***(foll)***
King v. Liverpool City Council [1986] 1 WLR 890 ***(refd)***
Midland Bank Trust Co Ltd & Anor v. Hett, Stubbs & Kemp (a firm) [1978] 3 All ER 571 ***(refd)***
Paterson Zochonis Ltd v. Merfarken Packaging Ltd [1983] FSR 273 ***(refd)***
Pilkington v. Wood [1953] Ch 770 ***(refd)***
Smith v. Leurs 70 CRL 256 ***(refd)***
Smith v. Littlewoods Organisation Ltd [1987] All ER 710 ***(refd)***
Yong & Co v. Wee Hood Teck Development Corporation [1984] 2 MLJ 39 ***(refd)***

Other source(s) referred to:
Charlesworth & Percy on Negligence, 7th edn

For the plaintiff - Christie Soosay Nathan; M/s Christie Soosay Nathan & Assoc
For the defendant - Zainur Zakaria; M/s Zainur Zakaria & Co

Reported by Usha Thiagarajah

JUDGMENT

Mohd Noor Ahmad J:

The plaintiff claimed damages against the defendant for breach of implied contractual terms, negligence, detinue and conversion. The allegation against the defendant is that, the defendant whilst acting as solicitors for the plaintiff, released four land titles of the plaintiff to one Chung Kung Ying

(hereinafter referred to as 'Chung') who subsequently through fraud charged the titles to two financial institutions and thereafter absconded with the loan monies.

2. Briefly, the evidence including documentary revealed that:

(1) 4 land titles of the plaintiff were handed over to Messrs. Shook Lin & Bok to be held as stakeholders pursuant to a joint-venture agreement of 18 March 1980 between the plaintiff and one Tang Lin Yan Sdn. Bhd. (hereinafter referred to as 'TLY') to develop the four pieces of land (lots 605, 606, 607 and 608 of Mukim Ulu Kelang, District of Gombak, Selangor) which was aborted. Subsequently, Messrs. Shook Lin & Bok forwarded the land titles to the defendant upon the defendant's undertaking not to release the same to the plaintiff until a sum of RM120,000 had been paid by the plaintiff to TLY.

(2) On 1 September 1983, without the plaintiff's knowledge the defendant released the land titles on the strength of a letter to Chung dated 29 August 1983 purported to be from the plaintiff authorising the defendant to release the land titles to Chung, even though the plaintiff had not paid the sum of RM120,000 to TLY. On 8 September 1983, through forgery by Chung, lots 607 and 608 were charged to Southern Finance Company Bhd. On 12 September 1983, the plaintiff entered into a joint-venture agreement with one Syarikat Pembinaan Rumah (Malaysia) Sdn. Bhd. (Chung is its alter ego) to develop the lands. On 29 September 1983 and 25 October 1983, through forgery by Chung lot 606 was charged to Perwira Habib Bank Malaysia Berhad. On 18 November 1983, the defendant wrote to Chung requesting for the return of the land titles without sending a copy to the plaintiff to which Chung did not respond. On 23 January 1984, the plaintiff executed a Power of Attorney in favour of Chung's company pursuant to the joint-venture agreement. On 10 April 1984, through forgery by Chung, lot 605 was charged to Perwira Habib Bank Malaysia Berhad and on the same date the defendant again wrote to Chung for the return of the land titles with a copy sent to the plaintiff for the first time. Chung also did not respond.

3. On the evidence I am satisfied that:

(1) the defendant was acting as solicitor for the plaintiff as stakeholder in respect of the land titles,

(2) the letter of 29 August 1983 purported to be from the plaintiff authorising the defendant to release the land titles to Chung was forged,

(3) the defendant released the land titles to Chung behind the back of the plaintiff and in breach of the undertaking given to Messrs. Shook Lin & Bok,

(4) Chung managed to charge the properties to the financial institutions mainly by:

(i) the production of the forged letter to obtain the land titles from the defendant,

(ii) preparing a fictitious Form 49 containing the names of directors and a secretary of the plaintiff other than it's true directors and secretary which was filed with the registrar of companies together with a fictitious Form 45, and

(iii) the use of a false resolution of the plaintiff authorising the charging of the properties to the financial institutions.

(5) From the time the land titles were released to Chung until the defendant wrote the first letter to Chung for the return of the land title (about 2 1/2 months) the defendant did not bother to check with the plaintiff about the authenticity of the letter of 29 August 1983, and thereafter until lot 605 was charged (about five months) the defendant did not take reasonable steps to safeguard the interest of the plaintiff in respect of the land titles although the defendant ought to have been put on the alert by the fact that Chung did not respond to the letter of 18 November 1983.

4. The plaintiff contended that the defendant was in breach of duty to the plaintiff and negligent, and that the charges of the land titles to the financial institutions were a direct and natural consequence of the negligence of the defendant. Therefore, the defendant was liable in damages as claimed being the direct consequences of the defendant's breach of duty. On the other hand, the defendant asserted that the charges of the properties to the financial institutions was not caused by the defendant's negligence but by the deliberate wrongdoings of Chung, a third party, over whom the defendant had no control and with whom the defendant had no special relationship, which served to break the chain of causation. In short, the damage to the plaintiff was not a natural consequence of the breach of duty of the defendant. Therefore, the damages as claimed are remote except for reasonable legal costs and expenses incurred to retrieve the titles by the plaintiff in obtaining a discharge of the charges.

5.(1) A solicitor's liability towards his client lies both in contract and in tort. A solicitor's contractual duty to a client as stated by the Federal Court in *Yong & Co v. Wee Hood Teck Development Corporation* [1984] 2 MLJ 39 is as follows:

> The principle applicable in a case of this nature as rightly applied by the learned Judge is that while the duty of a solicitor is directly related to the confined of the retainer, it is the incident of that contractual duty *that he has to consult his client on all questions of doubt which do not fall within the express or implied discretion left him. It is also his duty to keep his client informed to such extent as may be necessary according to the same criteria. (Midland Bank Trust and Groom v. Crocker (supra)) ....*

And with regard to a solicitor's liability in tort to his client the Federal Court in the same case stated:

> The liability of a solicitor may be viewed in two aspects. At common law the retainer imposes upon him an obligation to be skilful and careful and for failure in contract for negligence whether he is acting for reward or gratuitously. On the other hand, like any other individual, a solicitor is liable for his wrongful acts and if the circumstances justify the charge, he may be made liable to his client in tort. (See *Halsbury's Laws of England*, Third Edition Volume 36 page 96, paragraph 131). *He owes a duty not to injure his client by failing to do that which he had undertaken to do and which his client has relied on him to do. (Midland Bank Trust Co. Ltd. (supra))*

It was held in *Midland Bank Trust Co Ltd And Another v. Hett, Stubbs & Kemp (a firm)* [1978] 3 All ER 571:

> The solicitors were however liable to the plaintiffs in tort because under the general law *the relationship of solicitor and client give rise to a duty of a solicitor to exercise that care and skill on which he knew that his client would rely*, and to a duty not to injure his client by failing to do that which he had undertaken to do and which, at the solicitor's invitation, the client had relied on him to do. Furthermore, there was no rule of law which confined a solicitor's duty to his client under his retainer to a contractual duty alone; nor was there any rule of law which precluded a claim in tort for breach of a duty to use reasonable care and skill if there was a parallel contractual duty of care. ...

(2) In the impugned transaction SD1 performed for the defendant. He deposed that as at 1 September 1983 he had been in practice for about 12 years and had been a partner of the defendant for seven years.

He was involved in conveyancing and corporate law practice. He was aware that the practice of conveyancing work encompassed certain rules of etiquette and required a high degree of skill and caution on the part of the solicitors for the purpose of protecting the client's interest. He knew that a solicitor would be liable for what he undertook when giving a solicitor's undertaking, contracting parties and other solicitors placed very high regard to an undertaking given by a solicitor and that a breach of a solicitor's undertaking was a serious matter as it could affect his client's interest. He was also aware that the National Land Code made provisions for instances of fraud and forgery and that it was prudent for conveyancing solicitors to protect their clients' interest against possible fraud or forgery. He released the land titles to Chung on the purported letter of authorisation which he had no reason to suspect that it was forged because he knew that Lai Foh (the plaintiff's alter ego) and Chung were in negotiations on the joint-venture agreement which was produced to him by Chung still in draft form. Before releasing the land titles to Chung on the purported letter of authorisation which he had no reason to suspect that it was forged he did not verify with Messrs. Shook Lin & Bok whether the plaintiff had discharged its obligation to TLY under the undertaking because Chung told him that the monies would be settled once the joint-venture agreement was signed. After the land titles had been released to Chung, he did not write to inform the plaintiff about it due to an oversight. He did not send to the plaintiff a copy of his first letter to Chung requesting for the return of the land titles because he did not bother to do so, although he knew that in conveyancing matters it is the practice to send a copy of his correspondence to the client in order to keep the client informed. He did not do anything to get back the land titles from Chung and he did not inform the plaintiff about the release of the land titles to Chung between 18 November 1983 and 1 April 1984 because he assumed that Lai Foh knew that the land titles were with Chung and that had the joint-venture agreement not been executed the land titles ought to be returned to him. Subsequent to 18 November 1983 he did not advise Lai Foh to lodge a caveat on the lands but did so only when Lai Foh came to see him on 1 April 1984.

(3) On the facts deposed, I am satisfied that the conduct of SD1 under the circumstances had fallen well below the standards expected of a prudent conveyancing solicitor. In *Anthony Ting Chio Pang v. Wong Bing Seng* [1997] 2 CLJ 831, the court held that the solicitors were negligent in failing to properly ascertain the true identity of the person who claimed to be the owner of the land and held the said solicitors

to be negligent. Therefore, I conclude that the defendant had breached its contract with the plaintiff for failure to exercise the requisite care and skill to safeguard the plaintiff's interest whilst acting as the plaintiff's solicitors and also the defendant was negligent. I need not deal with the aspect of detinue and conversion because I assume that the plaintiff had abandoned the causes of action since the parties were silent on these in their written submissions.

6.(1) In *Smith v. Leurs* 70 CRL 256, in a passage which was cited with approval in *Home Office v. Dorset Yatch Co. Ltd.* [1970] AC 1004, Dixon J said at p. 262:

> The general rule is that one man is under no duty of controlling another man to prevent his doing damage to a third. There are, however, special relations which are the source of a duty of this nature.

The principles that can be derived from the cases of *King v. Liverpool City Council* [1986] 1 WLR 890 and *Smith v. Littlewoods Organisation Ltd.* [1987] All ER 710 are as follows:

(i) There is no principle of law excluding liability in negligence for damages caused by the deliberate wrongdoing of a third party;

(ii) However, for a defendant to be liable for the intervening deliberate wrongdoing of a third party, the plaintiff must prove that the damage that ensued was foreseeable as being very likely to happen at the time of the making of the contract;

(iii) A mere possibility of that which took place happening is insufficient. To prove that is was "very likely" to happen, the plaintiff will have to establish either a special relationship between the defendant and the third party or that the third party was under the "control" of the defendant or that the negligence of the defendant was the "effective" or "dominant" cause of the damages suffered by the plaintiff;

(iv) Such special relationship can arise in cases where the conduct of the defendant not only afforded the third party the opportunity to commit the wrongdoing but factual circumstances exist rendered the ensuing wrongdoing conduct of the third party to be very likely. The examples given by Lord Robert Goff were such as handing a loaded gun to a small boy, or entrusting a car to a man who is obviously drunk or incompetent so as

to give rise to a duty of care. Further examples which can give rise to a special relationship were examined by Oliver LJ in *Perl*'s case and these are set out in p. 897 C to F of Lord Purchas's judgment in *King*'s case;

(v) The control test was propounded by Waller LJ in *Perl*'s case and Oliver LJ in the same case. These pronouncements were quoted by Purchas LJ in *King*'s case and appear at p. 894 of the judgment;

(3) Briefly, Encik Zainur Zakaria, counsel for the defendant contended that what the defendant did by releasing the land titles to Chung was only to give Chung possession to them; and under our law, it was not possible for Chung to charge the lands by merely being in possession of the titles. For the lands to be charged would require a charge to be executed by the principal officers of the plaintiff, its resolution to that effect, its seal and its Memorandum and Articles of Association. In the usual course of things Chung could not conceivably have charged the lands because the defendant did not put him in possession of any of those documents and the financial institutions would not have entertained the applications for the loan without those documents. Hence, the documents of titles in the hands of Chung were quite useless in themselves. There was no way the defendant could reasonably have foreseen that Chung would forge the material documents of the plaintiff and thus enabling him to create the said charges. Anyway Chung would have perpetuated a fraud in any event since Chung could have possession of the land titles by reason of the joint-venture agreement and the Power of Attorney executed subsequently. He concluded that whatever test is applied whether the test of foreseeability to determine whether what was done by Chung was "very likely" or the "control" test, the wrongdoings of Chung ie, the third party, were clearly independent acts and of a magnitude which broke the chain of causation. Further, the act of the defendant in releasing the land titles may be the occasion for the loss but certainly not the cause of the plaintiff's losses, and since the pleaded case of the plaintiff is that the charge of the land titles to the financial institutions was the direct result of the defendant's negligence in releasing the land titles to Chung, the plaintiff's claim must fail if it cannot establish that the loss was a direct consequence of the defendants' negligent act.

7.(1) I am of the view that the National Land Code provides for instances offraud and forgery resulting in the creation of fraudulent charges and the effect thereof, which every practicing conveyancing solicitor should be familiar with. Without doubt, it is within the contemplation of the framers of the Code that forgery can also be carried out by forging documents other than the land title to enable the land to be charged. Such a contemplation should also have been within the minds of prudent conveyancing solicitors. Fraud and forgery pertaining to land transactions is not uncommon in Malaysia and this is why the public entrust conveyancing matters to solicitors. If solicitors can be absolved of all liabilities because they cannot be said to be able to foresee that a third party will commit fraud or forgery as a result of the solicitor negligently handing over land titles to a third party, then the retainer of a solicitor to handle a conveyancing matter would serve no useful purpose, as members of the public would be better off handling their conveyancing transactions by themselves. And if forgery or fraud of a third party that results from the negligence of a conveyancing solicitor is to be regarded as an 'unforeseeable event', this would open the floodgates, because it would mean that a conveyancing solicitor can be as negligent as he wants to be and yet not be in any way liable to his client, so long as the loss can be said to be caused by the fraud or forgery of a third party. That would be an unhealthy trend.

(2) Therefore, in the light of the above, having regard to the long experience of SD1 in conveyancing matters it is my considered view that SD1 could have foreseen the occurrence of fraud or forgery as the result of his negligently handing over the land titles to Chung, that is to say, SD1, could have foreseen the wrongdoings of Chung which resulted in the creation of the fraudulent charges in respect of the lands based on the facts pointing to his negligence as concluded by me as stated in paras. 5(2) and (3) above. Furthermore, I am of the opinion that when the land titles were negligently released to Chung who had no right to receive them, under the circumstances, the creation of the fraudulent charges over the lands is something that is "very likely to happen at the time of the making of the contract". And further, the defendant had the right to control Chung by reason of the undertakings given by the defendant to Messrs. Shook Lin & Bok not to release the land titles until TLY was paid the sum of RM100,000. The defendant could have given Chung strict directions that he was to take the land titles and hand them over to Messrs. Lovelace and Hastings, the solicitors handling the joint-venture

agreement, so that the latter could hold the land titles as stakeholders as envisaged in cl. 5(c) of the joint-venture agreement until the sum of RM100,000 payable to TLY was paid to the defendant. After having handed over the land titles to Chung the defendant could have further exercised its control over Chung soonest thereafter by contacting Messrs. Lovelace and Hastings to confirm that the land titles had in fact been handed over to them. In the event Messrs. Lovelace and Hastings informed the defendant that they still had not received the land titles from Chung, the defendant was still in a position to control Chung by informing him that if the titles were not forwarded immediately to either the defendant or Messrs. Lovelace and Hastings, a police report would be made against Chung and caveats lodged over the lands. If Chung was adamant the defendant could still exercise its control over Chung by lodging the police report and causing the relevant caveats to be lodged immediately before Chung could have the time to put into effect the fraudulent scheme he had devised. The truth is that the defendant did not at all exercise its control over Chung thus resulting in the plaintiff being put to loss and damage as claimed. Therefore, it is evidently clear that the negligence of the defendant was the "effective" or "dominant" cause of the damages suffered by the plaintiff. In other words, the negligence of the defendant in releasing the land titles to Chung was the "main event" leading to the damages suffered by the plaintiff.

(3) Robert Goff LJ in *Paterson Zochonis Ltd. v. Merfarken Packaging Ltd*. [1983] FSR 273 with reference to Lord Wilberforce's pronouncements in *Anns v. Merton London Borough Council* [1978] AC 728 said:

> It is plain that, in considering whether the duty of care should be negatived or limited in any new situation, the courts are making what is usually called a decision of policy (see the *Dorset Yacht* case, at p. 1059, per Lord Diplock). Presented with such a case, the courts have to do their limited best. They have no secretariat, or apparatus for inquiry. They have to derive all the guidance they can from the authorities, and from the writings of scholars; and they have the inestimable benefit of the assistance of counsel. But they are also fully entitled to, and do, draw on their own professional and practical experience. In the end, the choice must be one of judgment, in the balancing of conflicting interest; and in the exercise of that judgment the courts must strive neither unjustifiably to deprive potential plaintiffs of remedies for their injuries, nor unjustifiably to impose too heavy a legal responsibility on potential defendants. (See the judgment of Purchas LJ in *King v. Liverpool City Council* [1986], WLR 890 @ 899).

Encik Zainur Zakaria reminded me that I have to decide as a matter policy whether the duty of care imposed upon a solicitor should extend to ensure that a third party wrongdoer does not commit tortious acts against the victim of an original act of negligence (on the assumption that the release of the land titles to Chung was negligent) and urged me, on the facts of this case, not to impose liability on the defendant, otherwise it will tantamount to imposing an unjustifiably too heavy a legal responsibility on a solicitor, viewed from the perspective of remoteness or *novus actus interveniens* or natural consequences. Indeed, in arriving at the decision on the facts I have to strive neither unjustifiably to deprive the plaintiff of remedies for its injuries, nor unjustifiably to impose too heavily a legal responsibility on the defendant. To my mind, the former is the public interest by reason of what I have stated in sub-para. (1) above and the latter is in the nature of personal interest. Having balanced the conflicting interests I conclude that the public interest must prevail in this case.

8.(1) It is trite law that the governing purpose of damages is to put the party whose rights have been violated in the same position, as far as money can do, as if his rights had been observed. In cases of breach of contract the aggrieved party is only entitled to recover such part of the loss actually resulting as was at the time of the contract reasonably foreseeable as liable to result from the breach; and what was at that time reasonably so foreseeable depends on the knowledge then possessed by the parties or, at all events, by the party who later commits the breach. However, it is incumbent on the plaintiff the duty of taking all reasonable steps to mitigate the loss consequent on the breach, and debars him from claiming any part of the damage which is due to his neglect to take such steps, that is to say, the person who has broken the contract is not to be exposed to additional cost by reason of the plaintiff not doing what he ought to have done as reasonable man, and the plaintiff not being under any obligation to do anything otherwise than in the ordinary course of business (see *Pilkington v. Wood* [1953] Ch 770).

(2) The plaintiff's actual claim for special damages is RM2,155,417 comprised of the following:

(a) redemption sum for lots 605 & 606	..	RM1,400,000
(b) redemption sum for lots 607 & 608	..	RM 320,000
(c) brokers' commission for the sale of lands	...	RM 80,000

(d) legal fees & disbursements and fees to the Land Office for the discharge of the charges	...	RM 3,417
(e) consultant's fees paid to Nik Azmi bin Md. Daud for facilitating the redemption of the deeds	...	RM 352,000
		RM2,155,417

I allow the claim under items (a), (b) and (d) because they are direct losses and I am satisfied that the plaintiff had sufficiently mitigated its losses. Item (e) is also allowed because it was incurred in the course of mitigation of the plaintiff's losses whereby the redemption sum was substantially reduced from a huge outstanding amount under the charges. Item (c) is disallowed because the additional costs was incurred in sale of the lands when the plaintiff's decision to sell the lands was caused by (i) its impecuniosity (ii) the demand of the bank as a condition for the withdrawal of the suit and (iii) the substantial outstanding accumulated interest. It is settled law that a defendant cannot be required to compensate the plaintiff for any increased loss suffered, solely attributable to its impecuniosity (see at p. 239 *Charlesworth & Percy on Negligence* 7th edn). With regard to interest, the plaintiff is entitled to it only from the time when the plaintiff was deprived of the benefit of part of the sale proceeds which was paid to the financial institutions for the redemption of the land titles, ie, sometime in the middle of April 1994. The plaintiff is not entitled to interest from 1983 because the redemption sums are inclusive of accumulated interest.

9. Therefore, judgment is hereby entered against the defendant in the sum of RM2,075,417 with interest at 4% per annum from 15 April 1994 until the date of judgment and thereafter at the rate of 8% per annum until the date of full settlement, with cost.